

NOTICE OF PROPOSED ACTION

AB 3056 Handling Fee Permanent Regulations

CALIFORNIA CODE OF REGULATIONS
TITLE 14. NATURAL RESOURCES
DIVISION 2. DEPARTMENT OF CONSERVATION
CHAPTER 5. DIVISION OF RECYCLING

NOTICE IS HEREBY GIVEN that the Department of Conservation (Department), Division of Recycling (Division) proposes to adopt amendments to the California Code of Regulations (CCR). Commencing with Subchapter 2, Chapter 5, Division 2, Title 14 of the CCR, the Division will propose permanent regulations, after the consideration of all comments, objections or recommendations. The proposed amendments are as follows:

Subchapter 2. General Requirements

Article 5. Administrative Actions

§ 2125. INSPECTION AUTHORITY

Subsection 2125 (a) (5) has been amended to add Public Resources Code Section 14585 which gives the Division the authority to obtain allowable cost survey data from certified recycling centers.

Section 14536 (b) has been added to the Authority Section of Section 2125 to cite the Division's authority to adopt emergency regulations to implement Section 14585 of the California Beverage Container Recycling and Litter Reduction Act (Act).

Section 14585 has been added to the Reference Section of Section 2125 to give the Division the authority to collect Handling Fee Cost Survey data from certified recycling centers.

Subchapter 6. Recycling Centers

Article 2. Handling Fees

Subsection 2518 (a) (1) has been amended to delete (a)(3) and add (e) to reference the appropriate subsection of Section 14585 to allow the Department to utilize a standard container per pound rate for each material type to calculate handling fee payments.

Subsection 2518 (a) (2) has been amended to add (A) to Section 14585(a) (2) because (A) was added to Section 14585 (a)(2) in AB 3056.

Subsections 2518 (a) (4) (A) and (B) have been deleted because these sections are no longer necessary. Section 14585 (a)(5) (A) of the Act was revised in AB 3056 to state the amount of the handling fee per eligible container until June 30, 2008. Section 14585 (a) (6) (A) of the Act states the handling fee payment cannot be more than \$2,300 per month. Thus, it is redundant to also have Sections 2518 (a) (4) (A) and (B) of the regulations state the amount of the handling fee payment. New Section 14585 (a) (5) (B) of the Act, states that on and after July 1, 2008, the department shall pay a handling fee per eligible container in the amount determined pursuant to subdivision (f). Section 14585 (f) of the Act is a new subsection and it describes how the handling fee cost survey will be conducted.

New Subsection 2518 (a) (4) has been added because AB 3056 requires the Department to pay a handling fee per eligible container as determined by the handling fee cost survey required in Section 14585 (f) of the Act.

Subchapter 12. DOR Requirements

Article 3. Handling Fee Payments

Article 3. Handling Fee Payments has been added to Subchapter 12. because AB3056 requires the Department to conduct a cost survey in 2007, and every two years thereafter, to determine future handling fee payments beginning with the payments for the 2008/2009 fiscal year.

New Section 2990. Allowable Costs for Handling Fee Recycling Centers has been added to the regulations. AB 3056 added Section 14585 (f) (1) of the Act. Section 14585 (f) (1) requires the Department to include only those allowable costs contained in the regulations adopted by the Department to conduct cost surveys pursuant to Subdivision (b) of Section 14575. Thus, the costs in new Section 2990 are the same as the costs in Section 2960 Allowable Costs for Recycling Centers and Section 2965 Allowable Costs for Processors.

Section 14536 (b) has been included in the Authority Section of Section 2990 to cite the Division's authority to adopt emergency regulations to implement Section 14585 of the Act.

New Section 2995. Allocation of Allowable Costs for Handling Fee Sites has been added to the regulations. This section has been added to the regulations because AB 3056 requires the Department to use only those allowable costs currently authorized by statute and defined in Sections 2960 and 2965 for recycling centers and processors. This new section is necessary to mirror

Section 2970 for the cost surveys conducted pursuant to Section 14575 (b) of the Act.

Section 14536 (b) has been included in the Authority Section of Section 2995 to cite the Division's authority to adopt emergency regulations to implement Section 14585 of the Act.

New Section 2997. Notification of Handling Fee Changes has been added to the regulations. This section has been added to the regulations because AB 3056 requires the Department to calculate the handling fee payment by using cost surveys in conjunction with the cost surveys performed by the Department to determine processing payments and processing fees. Thus, the Department will give notice of handling fee changes to interested persons 15 days before the effective date of the change. The Department provides written notice of revised, terminated or newly established processing fee and processing payments to all interested persons at least 15 days prior to the effective date of the proposed change.

Section 14536 (b) has been included in the Authority Section of Section 2997 to cite the Division's authority to adopt emergency regulations to implement Section 14585 of the Act.

INFORMATION IS AVAILABLE UPON REQUEST. Copies of the express terms of the proposed action, the initial statement of reasons, and all of the information upon which this proposal is based are available upon request. The rulemaking file is available to the public for review during normal business hours at the Division of Recycling, 801 "K" Street, 19th Floor, Sacramento, California. For general or substance questions regarding this file, please contact the agency contact person, Karen Denz, at (916) 322-1899. The backup agency contact person for this rulemaking file is Eloisa Hernandez, who may be contacted at (916) 327-2757. Any technical inquiries shall be referred to the appropriate staff to ensure a prompt response.

SUBMITTING WRITTEN COMMENTS. The written comment period permits any interested person, or their authorized representative, to submit written comments addressing the proposed amendment to the Department. Written comments, which offer a recommendation and/or objection, or support the proposed amendment, should indicate the amended section to which the comment or comments are directed. Written comments should be sent to the Department and received before the close of the public comment period, no later than 5:00 p.m. on October 1, 2007. Additionally, we request that written comments reference a subsection or section of the proposed action. Written comments received by the Department after the close of the public comment period will not be responded to in the rulemaking file. Submit your written comments to: Karen Denz, AB 3056 Handling Fee Permanent Regulations, Department of Conservation, Division of Recycling, 801 "K" St., MS 19-02, Sacramento, CA

95814. During the 45-day comment period, written comments may also be E-mailed to: DORRegulations@consvr.ca.gov, or faxed to (916) 323-0732.

PUBLIC HEARING. A public hearing has not been scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

SUBSTANTIAL REVISIONS WILL REQUIRE A RENOTICE. Following the public comment period, the Department will adopt the regulations without further notice. However, if the Department chooses to substantially alter or revise the proposed regulatory action, a revised notice, called a renote, and the amended version of the proposed text of the regulations will be made available to the public for another public comment period for fifteen (15) days prior to its adoption. Those persons who testified at the public hearing, if held, or submitted written comments at the public hearing, or whose comments were received by the Department during the public comment period, or who requested notification from the Department of the availability of changes to the text of the proposed regulations, will be sent any renotes.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

AB 3056 changes the way handling fee payments to convenience zone recyclers are calculated. AB 3056 institutes a new system to determine handling fee payments per container. The Department previously conducted cost surveys to determine the cost of recycling each material type at non-handling fee recipient recyclers. This survey determined whether it costs the recycler more to accept, process and ship materials than the current scrap value for each material type. AB 3056 gives the Department the authority to conduct cost surveys of handling fee recipient recyclers. The Department must perform a separate cost survey of handling fee recipient recyclers and compare the costs to those of non-handling fee recipient recyclers. The cost differential between the cost of recycling the two types of containers will be the new handling fee payment per container. The Department is authorized to perform the cost surveys every other year, and the next scheduled survey is for calendar year 2007.

Emergency regulations were filed with the Office of Administrative Law (OAL) and became effective on February 5, 2007. These emergency regulations were necessary in order to ensure that the cost survey criteria were in place prior to the cost surveys being started in early 2007. This cost survey will be performed in conjunction with the cost survey performed by the Division to determine processing payments and processing fees. Handling fee site costs will be compared with the costs of non-handling fee sites. The handling fee will be calculated by subtracting the non-handling fee site costs from the handling fee site costs. This calculation will be used to determine the handling fee payments on and after July 1, 2008. These proposed regulations will make the emergency

regulations permanent to implement the provisions in AB 3056 for the handling fee calculation.

AUTHORITY

These regulations are submitted pursuant to the Department's authority under Public Resources Code subsections 14530.5 (b) and 14536 (b).

REFERENCE

Public Resources Code Sections 14504, 14513.4, 14526.6, 14537, 14538, 14539, 14540, 14549.1, 14575, 14581, and 14585

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: The Department has determined that adoption of these proposed regulations do not impose any new mandates on local agencies or local school districts.

Cost or savings to any state agency: No savings or additional expenses to state agencies are identified because the implementation of statute is financed by the beverage container recycling program itself.

Costs to any local agency or school district which must be reimbursed in accordance with Government Code §§17500 through 17630: The Department has determined that the adoption of these proposed regulations does not impose any additional cost obligations on local agencies or on local school districts.

Other non-discretionary cost or savings imposed upon local agencies: No other non-discretionary costs or savings to local agencies have been identified.

Cost or savings in federal funding to the State: No costs or savings in federal funding to the state have been identified.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Department has determined that no significant impact to California businesses will result from the adoption of this proposed regulatory language. These proposed regulations serve to clarify and make specific existing statutory requirements.

Potential cost impact on private persons or directly affected businesses:

The Department has determined that no significant impact to California private persons or directly affected businesses will result from the adoption of this proposed regulatory language. These proposed regulations serve to clarify and make specific existing statutory requirements.

Creation or elimination of jobs in California: The Department has determined that the adoption of these regulations will not:

- Create or eliminate jobs within California;
- Create new nor eliminate existing businesses within California;
- Expand businesses currently doing business in California.

Significant effect on housing costs: The Department has determined that the adoption of these regulations will have no significant effect on housing costs.

Effects on small businesses: The Department has determined that the adoption of these proposed regulations will insignificantly affect small businesses. These proposed regulations serve to clarify and make specific existing requirements contained in statute. These proposed regulations do not mandate actions upon private persons or businesses, but rather clarifies existing statutory mandates.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Department has not identified any adverse impacts resulting from these proposed regulations.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons may be obtained, when it becomes available, from the agency contact person or backup contact person identified in this notice.

ACCESSING INFORMATION REGARDING THIS FILE ON THE DEPARTMENT OF CONSERVATION WEBSITE

The text of the proposed regulations, the Notice of Proposed Action, the Initial Statement of Reasons and the Final Statement of Reasons, when available for review, will be on the Department of Conservation website at:

www.conservation.ca.gov.